

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 99-0596**  
**Adjusted Gross Income Tax**  
**For The Tax Periods: 1995, 1996**

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**ISSUE**

**I. Adjusted Gross Income Tax – Distributive Shares**

**Authority:** . IC 6-3-2-1, IC 6-3-2-2, 45 IAC 3.1-1-62.

The Taxpayer protests the assessment of adjusted gross income tax on distributive shares.

**STATEMENT OF FACTS**

Taxpayer was assessed Indiana adjusted gross income tax on distributive shares from a Subchapter-S corporation after the company failed to file Indiana IT-20S returns or Withholding Forms WH-18 for the years of 1994 through 1996. The corporation processed ferrous metals primarily for use in the steel and automotive industries. Taxpayer's Indiana operation broke up iron runoff scrap from steel mills. More facts will be supplied as necessary.

**I. Adjusted Gross Income Tax: Distributive Shares**

**DISCUSSION**

Taxpayer was assessed Indiana adjusted gross income tax on distributive shares from a Subchapter-S corporation. Taxpayer does not agree with the apportionment of income calculations using the three-factor formula. Taxpayer states that the corporation uses separate accounting for each operating location and maintains separate books. A tax is imposed on the adjusted gross income of corporations which is derived from sources within Indiana. IC 6-3-2-1. Also, IC 6-3-2-2(b) states in relevant part:

Except as provided in subsection (I), if business income of a corporation or nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

Taxpayer argues that the three-factor apportionment does not fairly represent Taxpayer's income from Indiana sources. Taxpayer states that separate books of accounting were kept for all of their business locations. Taxpayer provided a review of the separate accounting of the Indiana operations showing a loss for 1994. Taxpayer states that IC 6-3-2-2(l) provides for such a situation. IC 6-3-2-2(l) states:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors'
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources with the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

However, 45 IAC 3.1-1-62 clarifies IC 6-3-2-2(l), it states:

Special Formulas for Division of Income. All corporations doing business in more than one state shall use the allocation and apportionment provisions described in Regulations 6-3-2-2(b)-(k) [45 IAC 3.1-1-37- 45 IAC 3.1-1-61] unless such provisions do not result in a division of income which fairly represents the taxpayer's income for Indiana sources. In such case the taxpayer must request in writing or the Department may require the use of a more equitable formula for determining Indiana income. (*Emphasis added*). However, the Department will depart from use of the standard formula only if the use of such formula works a hardship or injustice upon the taxpayer, which results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states. It is anticipated that these situations will arise only in limited and unusual circumstances (which ordinarily will be unique and nonrecurring) when the standard apportionment provisions produce incongruous results.

Taxpayer states that 45 IAC 3.1-1-62 provides an opportunity for Taxpayer to present an alternative to the apportionment method if the apportionment method does not fairly represent Taxpayer's Indiana operations. They state the use of a more equitable formula is appropriate since the imposition of a tax upon Taxpayer who incurs a loss from Indiana operations before applying any selling and administrative expenses creates a hardship upon Taxpayer by assessing an income tax on operations that generated no economic benefit. Taxpayer states that the three-factor apportionment does result in an arbitrary division of income when the Department ignores the true results of the Indiana operations represented by separate accounting records.

Nevertheless, both IC 6-3-2-2 and 45 IAC 3.1-1-62 make clear that Taxpayer must request in writing for a different apportionment method and, it will be allowed ordinarily only in unique and nonrecurring circumstances. Taxpayer has not provided any documentation demonstrating

that the Department approved any deviation from the standard formula of apportionment. Furthermore, Taxpayer has not provided a compelling reason to deviate from the apportionment formula. Taxpayer only requested the special apportionment method after he was assessed as a result of not filing tax returns. Consequently, Taxpayer was properly assessed for the periods in question.

**FINDING**

Taxpayer's protest is respectfully denied.